intended to provide a place where the record evidence of the acts of the governor and the existence of the statute laws of a State shall be kept. This being true, when a record made by those officers in the manner and within the time prescribed by law is found in the office of the Secretary of State, it is conclusive and unimpeachable record evidence of the authenticity of the official acts therein recorded. It should not be overturned by oral evidence. *Weeks v. Smith,* 81 Me. 538; *Tarlton v. Peggs,* 18 Ind. 24. It is readily seen that the bill, as recorded in the office of the Secretary of State, is the bill as it left the governor's control. Whether the governor changed his approval several times can make no difference, because such would not appear on the record and would have to be shown by evidence of less dignity. The courts are hostile to such attempts. *Field v. Clark,* 143 U. S. 649. Even the courts which allow the journals of the legislature to control the enrolled act, do not consider the journals as evidence of less dignity.

There is another line of argument in favor of allowing a governor to withdraw his approval. It is by way of analogy. The Senate or house can reconsider as long as the matter is within their control. Why cannot the governor? The right to reconsider is a necessary incident to the power to act. It is not peculiar to legislative bodies, but is common to all human transactions where there is discretion to be exercised. An individual may erase his name from a deed as long as it is within his control; and even a court of justice may reconsider its solemn judgments months after they have been rendered. Should this approval of a law by the governor be the solitary exception? If so, some great principle of public policy should require it. For in all cases, both public and private, a party may change his purpose and decision as long as the subject-matter still remains before him.

These arguments in favor of the right of a governor to reconsider may not be any more logical than those on the other side, but the conclusion deduced from them has the additional merit of being practical. In the first place, it does away with the whole uncertainty of relying on oral evidence. To be sure in the Arkansas case under discussion, the court did not have so difficult a problem as would ordinarily follow, with respect to the introduction of oral testimony, because of the fact that Gov. Pindall's veto message contained a statement of the fact that Gov. Moore had approved the bill. But in the ordinary run of cases it would seem that the doctrine of the courts which hold the view contrary to that followed by the Arkansas court, would be more conducive to certainty in the law. For the conclusion set forth by that court might lead to great confusion, since that which appears from the record to be the final executive action in approving or disapproving a bill might be set at naught by proof of prior inconsistent action on the same bill.

EXEMPTION CLAUSES IN ACCIDENT INSURANCE POLICIES.

The case of *Bader v. Amsterdam Casualty Co.,* 112 N. W. 1065, recently decided by the Supreme Court of Minnesota, reveals the difficulty which the courts have encountered in the interpretation of

exemption clauses in accident insurance policies, and although the rule of construction that policies should be construed in favor of the insured, has been of universal application, yet the results have been far from harmonious, because the rule has been given a wide scope in some cases and a very limited one in others.

The insured in this case was shot by robbers, and there was no evidence that he was negligent or in any way contributed to his death. He had an accident policy in the defendant company which allowed $2,500, in case of loss of life by accident with a "Special Indemnity" clause alowing one-half of the full amount if the insured met his death "by shooting," among several enumerated exceptions. It is to be noted that the phrase "by shooting," if standing alone, may literally mean death by shooting whether the insured shot himself with suicidal intent, or shot himself accidentally or was shot by another. His beneficiary, the plaintiff, endeavored to recover the face value of the policy which would really interpret the words to mean that while shooting, as a sport (certain other sports were enumerated in the special clause), the insured was to recover $1,250, but by being shot, he should recover $2,500. The trial court allowed a recovery of $1,250, which was affirmed by this opinion, interpreting the contract to mean that he could recover nothing if he killed himself intentionally, but one-half the full value if he was killed by another.

The exact phrase in controversy seems never to have been judicially determined, but the plaintiff relied upon certain cases in which the construction of doubtful words was discussed. Of them we may say that where the policy did not state whether the act was participated in by the insured, the doubt was decided in his favor and it was held that it was to be implied that an act of his own volition only would excuse the company. One case hung on the phrase, "death resulting from poisonous substances," and the court used this language: "death from a rattlesnake bite is clearly from poisonous substances, but we presume that no one will contend that recovery in such a death could be denied." All the plaintiff's cases, however, have peculiarities which are not found in the case at bar, which may equally be said of those relied upon by the defendant.

The cases most like this one involve such phrases as "inhaling gas," "poison" and the like, and seem to be quite contradictory. *Paul v. Ins. Co.,* 112 N. Y. 472, was one of the earliest cases on the subject and held that death resulting to one while sleeping, was one through accidental means when the insured had inhaled gas and he was allowed to recover. The policy was to be construed by the spirit as well as the letter, and that in expressing its intention not to be liable for death from "inhaling gas" the company can only be understood to mean a voluntary and intelligent act by the insured and not an involuntary and unconscious act. This death was an accident and "the cause came from the outside as surely as a fatal rifle ball."

The Circuit Court of Appeals furnishes us with an unique situation. On October 3rd, 1898, the court by Sanborn, J., handed down a decision holding that a death from poison accidentally taken under

the mistaken belief that it was a harmless medicine was such a death as exempted the company from payment under its policy, (*McGlother v. Provident Mut. Acc. Co.,* 89 Fed. 685). The reasoning of the court was that "the whole is greater than any of its parts, and includes them all. Death from poison is greater than, and necessarily includes, death from poison taken in any particular way, because it includes death from poison taken in every way. It includes death from poison taken intentionally or unintentionally." Further, the parties had the right to enter into this contract which was neither immoral, illegal, or contrary to public policy, and that it should be strictly construed as written. Judge Thayer dissented from this opinion, stating his reasons to be that the scope of the exception should be more limited, and that the intent is a material point—that if the poison is taken intentionally, there can be no recovery, but if the death results from poison taken unintentionally, it is clearly an accident which the policy covers. He relied on *Paul v. The Insurance Co., supa,* and cases in Pennsylvania and in Illinois, which had followed the Paul case; also the rule in The U. S. Supreme Court, *Pickett v. Ins. Co.,* 144 Pa. St. 79; *Ins. Co. v. Dunlap,* 160 Ill. 642; *Ins. Co. v. Terry,* 15 Wall. 580, all of which are authorities for the proposition that the exception against liability must be understood "to mean a voluntary and intelligent act by the insured," and if the act is not done intentionally or voluntarily the insurer is still liable.

Just one year later, the same court was confronted by a similar state of acts and Thayer, J., now delivered the majority opinion, restating his dissenting views in the McGlother case, and dwelt at some length on the fact that the highest courts of several States had interpreted the same phrase against the company, for which reason the Insurance Company, as if by estoppel, should not be heard to urge its contentions on that court. Sanborn, J., dissented in this opinion and referred to his majority opinion in the McGlother case, *Fid. & Cas. Co. v. Lowenstein,* 97 Fed. 17. Neither case seems to have been appealed.

The contract declares to the insured, that, though he may be killed or injured through violence and accidental means, yet if the calamity occurs under certain circumstances, the insurers will not be liable. The contract in its broadest scope only embraces within its indemnity personal injuries effected through forcible and accidental means, and the proviso simply excludes from this class of injuries all that occurred under the circumstances enumerated. *Southard v. Assurance Co.,* 34 Conn. 574.

This is undoubtedly a rule of some merit and the courts will strictly construe contracts that are clear and unambiguous, but where the policy contains words of doubtful meaning, the decision has been generally against the company on the ground that "the insurer draws up the policy and he is presumed to have employed words which express his real intention." *Dunning v. Mass., etc., Association,* 99 Maine 390. The courts holding the opposite view have criticised the New York, Pennsylvania and Illinois rule because the insured need not enter into the contract with the company, but once

he does, both should be *pari passu,* and the rule of construing against the insurer and in favor of the insured, which Sanborn, J., has called the much abused rule, ought not to have any weight. Many of the authorities which have refused to follow the majority rule have had special reasons for their decisions. *Pref. Acc. Ins. Co. v. Robinson,* 45 Fla. 525.

The very earliest forms of accident policy made exemptions in case of suicide and so it seems reasonable to presume that words of doubtful construction should be interpreted to mean that intentional death only should excuse the company, while death from purely accidental and external means could only excuse the insurer from payment when the language was so clear as to be unmistakable.

The Bader case seems to be a virtual victory for the majority rule and we think the full indemnity would have been allowed if it were not for the "special indemnity" clause. Both on reason and authority the decision seems fully justifiable and it will be interesting to note the stand which the courts, concurring in Judge Sanborn's view will take when they have to determine the phrase "by shooting."

EXTENT OF INDEFINITE EASEMENT AS EFFECTED BY THE EXTENT TO WHICH IT HAS BEEN USED.

The New Jersey Court of Chancery has recently handed down a decision of great interest upon a question of much importance in this, the period of formation of the large pipe line systems of the future. In the case of *Standard Oil Company v. Buchi,* 66 Atl. (N. J.) 427, the plaintiff company acquired by deed from the defendants "the right to lay down pipes for the transportation of petroleum and to operate the same over" the lands, "together with all the right and privileges incident and necessary to the enjoyment of the grant and removal of the pipes." The plaintiff had twice exercised the right, but when he attempted to lay a third pipe over defendant's land close beside the others the defendants prevented it by violence. The plaintiff asks for an injunction to restrain such interference. The court held that that which was granted was not an easement as there was no dominant estate: that it was not a license, for a license is revokable, and this right was not: but that it was a positive and permanent interest or estate in the land: and that the previous exercise of the right did not define the extent of the right so as to prevent the laying of the third pipe. The injunction was granted with an order that plaintiff make compensation for additional damages occasioned by the laying of the third pipe.

The earliest view of this question is that where a right of way has been granted in general terms without specifying the width, the grantee is presumed to take a fee in the full width allowed by the charter, regardless of what is actually occupied. The question originally arose in cases where railroads had not occupied the whole of the grant allowed by their charter. This view was arrived at from a consideration of the power of eminent domain, and of the interest so appropriated.